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GlaserWeil

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PERSONALWEB TECHNOLOGIES, LLC and
LEVEL 3 COMMUNICATIONS, LLC,

CASE NO.: 5:13-cv-01358-EJD

JOINT STATUS REPORT

Hon. Edward J. Davila

Plaintiffs,

V.

EMC CORPORATION and VMWARE, INC.,
Defendants

Defendants.

On January 13, 2014, this Court stayed these actions “in their entirety pending final exhaustion of the relevant review proceedings, including any appeals.” (*See* Dkt. 41). The review proceedings initiated by defendants EMC Corporation (“EMC”) and/or VMware, Inc. (“VMware”) have resulted in the following decisions:

Claims invalidated and subject to no further appeals

- Claims 1-4, 29-33, and 41 of Patent No. 5,978,791; Claims 36 and 38 of Patent No. 6,415,280; Claim 1 of Patent No. 7,945,544; Claims 10, 21, and 34 of Patent No. 7,945,539; Claims 1, 3, 4, and 30 of Patent No. 7,949,662; and Claims 1, 2, 81, and 83 Patent No. 8,001,096. *See* (IPR2013-00082), Dkt.83, Final Written Decision, at 66; (IPR2013-00083), Dkt. 80, Final Written Decision, at 41-42; (IPR2013-00084), Dkt. 64, Final Written Decision, at 57-58; (IPR2013-00085), Dkt. 73, Final Written Decision, at 76-77; (IPR2013-00086), Dkt. 66, Final Written Decision, at 41; and (IPR2013-00087), Dkt. 69, Final Written Decision, at 54 (affirmed without opinion on August 10, 2015).

The review proceedings initiated by defendants in related cases have resulted in the following additional decisions:

Claims invalidated and subject to no further appeals

- Claim 70 of Patent No. 7,802,310 (“the ‘310 patent”). See (IPR2013-00596), Dkt.33,

1 Final Written Decision, at 25 (not appealed).

2 ***Claims preliminarily invalidated but subject to further PTO proceedings and appeals***

- 3 • Claim 7 of patent number 6,928,442 (“the ’442 patent”). *See* Reexamination No.
4 90/013,764.

5 ***Claims confirmed as patentable and not subject to further PTO proceedings or appeals***

- 6 • Claims 24, 32, 81, 82, and 86 of the ’310 patent. *See* Personal Web Technologies,
7 LLC v. Apple, Inc., No. 2018-1599 (Fed. Cir. Mar. 8, 2019) (mandate issued to the
8 United States Patent and Trademark Office, June 12, 2019).

9 * * * *

10 The claims at issue in this case and not presently subject to further PTO proceedings or
11 appeals are as follows:

- 12 • Claims 24, 32, 81, and 86 of the ’310 patent.
13 • Claims 1, 2, and 4 of the ’442 patent.

14 To streamline the case and avoid further delay, PersonalWeb agrees to dismiss with
15 prejudice the asserted claims in the ’442 patent and to not reassert any claims of the ’442 patent
16 against EMC, VMware, their direct and indirect customers, distributors, or end users, or any of the
17 foregoing entities’ affiliates, shareholders, directors, officers, employees, agents, representatives,
18 assigns, predecessors, or successors based on their use, sale, or offer to sell EMC’s or VMware’s
19 products at issue in this case and products no more than colorably different. Based on this
20 agreement, claims 24, 32, 81, 82, and 86 of the ’310 patent are the claims that remain at issue in this
21 litigation.

22 In view of the status of these proceedings, and subject to PersonalWeb’s agreement above
23 (and entry of an appropriate order thereon), the parties agree and respectfully ask that the Court lift
24 the current stay and set a status conference at its earliest convenience to, among other things, set a
25 schedule for resolving the remaining disputes regarding claims 24, 32, 81, 82, and 86 of the ’310
26 patent.

27 The parties further notify the Court that, besides this case, PersonalWeb’s cases against
28 Google, Facebook, and Apple remain pending in the Northern District of California. *See*

1 *PersonalWeb Technologies LLC v. Google, Inc. et al.* Case No. 5:13-cv-01317 (NDCA, Hon.
 2 Edward J. Davila); *PersonalWeb Technologies LLC et al v. Apple Inc.*, Case No. 5:14-cv-01683
 3 (NDCA, Hon. Edward J. Davila); *PersonalWeb Technologies LLC et al v. Facebook Inc.*, Case No.
 4 5:13-cv-01356 (NDCA, Hon. Edward J. Davila).

5 The parties further notify the Court that, since this case was filed, PersonalWeb has brought
 6 suit against 48 additional defendants alleging infringement of five patents, including the '310 patent
 7 and the '442 patent. None of the claims in the '310 patent remaining in this case are at issuehave
 8 been asserted. These actions have been consolidated before the Honorable Beth Labson Freeman in
 9 the Northern District of California pursuant to an Order from the Panel on Multidistrict Litigation.
 10 See *In re: Personalweb Techs., LLC, & Level 3 Commc'ns, LLC, Patent Litig.*, MDL No. 2834, 340
 11 F. Supp. 3d 1373 (U.S. Jud. Pan. Mult. Lit. 2018). None of the claims in the '310 patent remaining
 12 in this case have been asserted in the MDL proceeding and the MDL proceeding involves accused
 13 products and services that differ from those at issue in this case.

14
 15 DATED: June 24, 2019

Respectfully submitted,

16 GLASER WEIL FINK HOWARD
 17 AVCHEN & SHAPIRO LLP

18 By: /s/Lawrence M. Hadley
 19 LAWRENCE M. HADLEY
 Attorneys for Plaintiff
 20 PERSONALWEB TECHNOLOGIES, LLC

21 DATED: June 24, 2019

WILMER CUTLER PICKERING HALE AND
 22 DORR LLP

23 By: /s/Robert Galvin
 24 ROBERT GALVIN
 Attorneys for Defendants and
 Counterclaim-Plaintiffs EMC Corporation
 25 and VMware, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 24, 2019 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. Any other counsel of record will be served by electronic mail, facsimile, U.S. Mail and/or overnight delivery.

/s/Lawrence M. Hadley
LAWRENCE M. HADLEY

GlaserWeil